

This accident occurred on a Friday and the tightness in the claimant's low back continued through Saturday. Claimant's symptoms increased on Sunday morning when he was showering and bent over to pick up the soap he had dropped. At that time, claimant suffered muscle spasms in the same area of his low back that had been hurting since his work-connected incident on Friday morning. Because of his low back problems, he was unable to go to work on Monday, January 9, 1995. He telephoned his supervisor notifying him of his back problems which included the tightness suffered on Friday and the spasms which occurred on Sunday.

On January 13, 1995, respondent finally referred the claimant to Dr. Eyster for treatment and he prescribed physical therapy. From Dr. Eyster's medical records, the last time he saw the claimant was February 3, 1995, when he continued him off of work. Claimant testified at the Preliminary Hearing on April 4, 1995, that he had been off work since his accident of January 6, 1995.

Claimant's attorney also referred claimant to Edward Prostic, M.D., on January 31, 1995. In addition to an opinion in reference to the subject accident, Dr. Prostic also evaluated the claimant for a previous work-related injury to his left ankle. Dr. Prostic opined that the claimant, on January 6, 1995, sustained an injury to his low back and was in need of further medical treatment and the continued use of anti-inflammatory medication.

The respondent introduced into evidence a telephone statement that claimant gave on January 20, 1995 to an insurance carrier's claim representative. Respondent argues that claimant's testimony was inconsistent with such statement. Respondent points out that the claimant testified that the accident occurred between 3:30 - 4:00 p.m. when the statement was taken and that he testified at the Preliminary Hearing that it happened at 9:45 a.m. Additionally, the respondent contended that the claimant suffered an intervening accident at his home when he bent over to pick up the soap while he was showering on Sunday. Respondent also introduced a medical record from respondent's doctor, R. Marek, D.O., who examined the claimant on January 20, 1995, indicating that it would be difficult to relate claimant's injury to his strenuous day at work on January 6, 1995.

The Appeals Board finds that the preliminary hearing evidentiary record supports the decision of the Administrative Law Judge which granted preliminary hearing compensation benefits to the claimant. The medical records of Dr. Eyster indicate that the first time claimant saw him on January 13, 1995, he gave a history of hurting his back while working on January 6, 1995. Dr. Prostic's medical report relates the claimant's back problems to his employment. Claimant's telephone statement to the insurance carrier's claims representative is inconsistent as it relates to the particular time of day that the injury occurred, but the Appeals Board finds that this inconsistency is not sufficient to defeat the claim in light of the overwhelming weight of the contrary evidence. In regard to whether the claimant suffered an intervening accident, the testimony of the claimant establishes that he developed a tightness in his back after the work-related accident on Friday and symptoms continued in his low back through Sunday when he bent over to pick up the soap. From this history, the Appeals Board finds that the resulting muscle spasms that occurred at that time were a natural and probable consequence of his original injury that occurred on Friday.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl, dated April 4, 1995, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Keith L. Mark, Mission, KS
Stephen A. McManus, Kansas City, KS
Shannon S. Krysl, Administrative Law Judge
David A. Shufelt, Acting Director